T/N GRANDVISION ENTERPRISE SDN BHD *a*

v.

NG SOK HOOI

HIGH COURT MALAYA, TEMERLOH *b*
HISHAMUDIN YUNUS J
[ORIGINATING SUMMONS NO: 24-119-98]
31 AUGUST 1999

LAND LAW: *Caveat - Caveat entered by defendant on lot purchased by plaintiff - Whether plaintiff aggrieved - Caveat entered subsequent to plaintiff's caveat - Whether plaintiff entitled in priority - Justification of caveat - Limitation* *c*

The plaintiff applied to remove a caveat entered by the defendant on a shop house ('Lot 2838'). This lot was amongst 42 lots of land ('the land') bought by the plaintiff in 1996. On December 1996, the plaintiff lodged a caveat on the land. Subsequently, in November 1997, the defendant also lodged a caveat but only in respect of Lot 2838. Due to the defendant's caveat, the plaintiff could not transfer the said lot to it. *d*

The defendant relied on a tripartite sale and purchase agreement entered in 1979 between her and two other parties, *ie*, the developer and the registered owners of the said lot. The defendant claimed that a part payment of RM39,000 had been made to the developer. *e*

Held: *f*

[1] As the plaintiff had brought the land, it had an interest in the land. It had a right to have the title of the land to be transferred to it. Thus, the plaintiff was a person aggrieved by the existence of the caveat entered by the defendant [*Eng Mee Yong & Ors v. V Letchumanan*].

[2] The plaintiff was the first person to caveat the land. It registered the caveat over the land in 1996 whereas the defendant registered her caveat only in 1997. Therefore, the plaintiff was entitled in priority [*Re Tan King Hwa*]. *g*

[3] The defendant failed to justify the existence of her caveat. The defendant did not take any steps to commence legal proceedings to enforce her rights under the sale and purchase agreement in 1979. Further, when the plaintiff bought the land in 1996, seventeen years had already lapsed since the said sale and purchase agreement in 1979. Any legal or equitable right the defendant had under the said 1979 agreement was extinguished due to the *h* *i*

passage of time and unexplained inaction. The defendant must, in law be deemed to have waived her right to enforce her claim. Also, by virtue of s. 9 of the Limitation Act 1953, limitation had set in.

[4] It is incumbent upon the defendant as caveator to take prompt action to enforce her right to specific performance. Until the day of the hearing of this application, the defendant had yet to file any writ. The defendant only filed an originating summons on 3 November 1998 and that too to obtain leave to commence action against the developer. Further, there was no merit in the defendant's allegation that there was a collusion between the plaintiff and the registered proprietors to defraud her and that the sale of the land to the plaintiff was *mala fide*.

[Application allowed.]

Case(s) referred to:
Eng Mee Yong & Ors v. V Letchumanan [1979] 2 MLJ 212 ***(refd)***
Re Tan King Hwa [1972] 1 MLJ 239 ***(refd)***

Legislation referred to:
Limitation Act 1953, s. 9
National Land Code, s. 327

For the plaintiff - Ramachelvam Manimuthu; M/s Zuki, Gandhi & Amin
For the defendant - Shuhaidi Abdul Malik; M/s Bahari, Choy & Nongchik

Reported by Usha Thiagarajah

JUDGMENT

Hishamudin Yunus J:

This is an application by the plaintiff for the removal of a caveat and other consequential relief. This application is made pursuant to s. 327 of the National Land Code.

On the day of the hearing of this application, the learned counsel for the defendant, Encik Shuhaidi, had asked for an adjournment to enable the defence to file a further affidavit. Encik Ramachelvam, for the plaintiff, informed the court that he had no objection. As I observed that both sides had already filed many affidavits (each side had filed six affidavits), I inquired from the counsel for the defendant the reason for the need to file a further affidavit. Encik Shuhaidi replied that he was unable to answer because the case was handled by another counsel, Encik Lai Chee Meng, who was engaged in a case in the High Court of Kuala Lumpur. He requested for an adjournment to enable Encik Lai to be present in court. I had refused the request for an adjournment because prior to the day of the hearing, there was no indication at all that counsel for the defendant would ask for an adjournment.

I proceeded to hear the case.

The plaintiff bought 42 lots of land ("the land") from one Ng Kim Tin who holds an irrevocable power of attorney granted to him by the registered proprietors by the name of Ng Han Seng and Ng Kim Seng. Included in the land is a shop-house held under land title HS(D) 143, Lot No. 2838 Mukim Pedah, Daerah Jerantut ("Lot 2838"). The sale and purchase agreement was executed in 1996. The plaintiff duly paid the purchase price of RM2,100,000 to the vendor.

On 16 December 1996 the plaintiff lodged a caveat on the title of the said land.

Subsequent to the purchase, in November 1997, the defendant also lodged a caveat, but only in respect of Lot 2838.

By reason of this caveat lodged by the defendant, the plaintiff was unable to have Lot 2838 transferred to it. Hence, the present application.

I am allowing the present application on the following reasons.

First, as the plaintiff has bought the land, it has an interest in the land. It has a right to have the title of the land be transferred to it. Thus the plaintiff is a person aggrieved by the existence of the caveat entered by the defendant: *Eng Mee Yong & Ors v. V Letchumanan* [1979] 2 MLJ 212.

Second, the plaintiff was the first person to caveat the land. It registered the caveat over the land in 1996, whereas the defendant registered her caveat only in 1997. Therefore the plaintiff is entitled to priority: *Re Tan King Hwa* [1972] 1 MLJ 239.

Third, the defendant has failed to justify the existence of her caveat. In her affidavit she relied on a tripartite sale and purchase agreement entered in 1979 between her and two other parties, namely, a developer by the name of Taman Tiow Soon Sdn Bhd and the two registered owners, to purchase the unit of shop house, Lot 2838, costing RM98,000. She claimed that a part payment of RM39,000 has been made to the developer.

This is a weak justification. For, when the developer defaulted to deliver vacant possession of the shop-house, the defendant did not take any step to commence legal proceeding to enforce her rights under the sale and purchase agreement. Taking the year 1996 (*ie*, the year plaintiff bought the land), about seventeen years had lapsed since the date of the defendant's agreement (1979). And, taking the due date of delivery of possession (delivery of possession of Lot 2838 had to be made by the developer to the defendant within eighteen months from the date of the agreement) about fifteen or sixteen years had lapsed. This

is too long a period, and no explanation was given for the failure to take legal proceedings. Any legal or equitable right that the defendant might have had under the 1979 agreement, if any, would have been extinguished due to the following dual factors: the passage of time and the defendant's unexplained inaction. The defendant must, in law, be deemed to have waived her right to enforce her claim.

And, in the context of the law of limitation, at the present time, or even at the time when the plaintiff bought the land in 1996, the defendant can no longer enforce her claim under the 1979 agreement. For limitation has set in: s. 9 of the Limitation Act 1953.

It is the law that it is incumbent upon the defendant/caveator to take prompt action to enforce her right to specific performance: Eng Mee Yong. But in the present case, on the affidavits, it appears that, until the day of the hearing of this application, the defendant has yet to file any writ. According to the defendant's affidavit at encl. 26, only on 3 November 1998 did she file an originating summons, and even that it was only to obtain leave to commence action against the developer (who had been wound-up in 1987).

The defendant also alleges in her affidavit (which is denied by the plaintiff) that there was a collusion between the plaintiff, Ng Kim Tin and the registered proprietors to defraud her and that the sale of the land to the plaintiff was *mala fide*.

I find that there is no merit in this allegation. I find the defendant's account (encl. 7 para 7) to be too lengthy, complicated and vague. Moreover, she was relating to events taking place in 1996 and I have held that by 1996 the defendant has ceased to have any legal or equitable rights over Lot 2838. Indeed, Encik Shuhaidi, the learned counsel for the defendant in his submissions did not touch on this issue of *mala fide*.

Application allowed with costs.